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## **For Immediate Release:**

August 10, 2007

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## **Title Insurance**

### ***Protecting Your Home Investment Against Unknown Title Defects***

Most first-time home buyers are familiar with various types of insurance (e.g., auto, life), but are unaware of what title insurance is, and the role it plays in real estate transactions. In the rush to close such transactions as quickly as possible, title insurance is typically an area that consumers commonly overlook in the home buying process.

If you borrow money to finance the purchase of a home or property, a lending institution will likely require you to buy a title insurance policy to protect its interest. As a consumer, it is in your best interest to be well informed about title insurance, how title insurance works and key areas to be addressed when purchasing title insurance.

### **What is Title Insurance?**

Title insurance can help provide the home buyer and/or the mortgage lender necessary protection against losses resulting from unknown defects in the title to your property that occur prior to the closing of a real estate transaction.

Unknown defects in a title, such as any outstanding liens on the property (e.g., unpaid real estate taxes by a prior owner) or encumbrances (anything that might hinder the owner's right of ownership; e.g., errors or omissions in deeds, undisclosed errors, fraud, forgery, mistakes in examining records), can result in additional costs in the future or even invalidate a home buyer's right of ownership in the property, and might also invalidate the lender's security interest in the policy. Title insurance policies will cover the insured party for any covered losses and legal fees that might arise out of such problems.

### **What Do Title Insurance Agents/Companies Do?**

Title insurance agents/companies search public records to develop and document the chain of ownership of a property. If any liens or encumbrances are found, the title company

might require that the home buyer take steps to eliminate them before issuing a title policy.

Title insurance agents might also hold money in escrow and perform closing services for an additional fee.

### **How Does Title Insurance Work?**

Title insurance policies are indemnity policies - typically. They protect against losses arising from events that occur prior to the date of the policy, which is the date of closing. This is unlike other types of insurance policies, such as auto or life insurance, which protect against losses resulting from accidents or events that occur after the policy is issued. A title policy is usually paid for with a one-time premium that is handled at the closing of the real estate transaction.

### **Who Needs Title Insurance?**

**Lenders** - If a mortgage is obtained in order to purchase property, nearly all lenders require that the home buyer purchase the lender's title insurance policy for an amount equal to the loan. A lender's policy is issued to a mortgage lender. The policy provides the lender protection from covered losses arising from any

previously unknown defects in the title that have become known only after the insured property has been financed. The lender's insurance policy will remain in effect until the amount financed has been repaid, the property is resold or until refinancing has occurred.

**Owners** - Either the home seller or the home buyer may buy an owner's policy. In many areas, sellers pay for owner title policies as part of their obligation in the transfer of title to the home buyer. The party paying for the owner's policy can be negotiated during the purchasing process. An owner's policy is issued to a home buyer, and provides the home buyer protection from covered losses arising from any previously unknown defects in the title that existed at the time of purchase, and became known only after ownership of the property was acquired. An owner's policy remains in effect as long as you own or maintain an ownership interest in the insured property.

### Marketing and Sales Practices

Although home buyers are free to shop around for a title agent or a title insurer, many home buyers do not do so. Because of unfamiliarity with title insurance, home buyers tend to defer such decisions to lenders and/or real estate professionals who are parties to the home buying transaction. As a result, conflicts of interest can occur if the entities making such decisions have a financial interest in a title agency or title company. Section 8 of the federal Real Estate Settlement Procedures Act (RESPA) prohibits the giving or accepting of kickbacks and referral fees among persons involved in the real estate settlement process.

### Key Points to Remember

- Although a title insurance company will most likely be provided for you during the mortgage transaction process, be aware that you are not obligated to use the suggested title company.
- Be sure to inquire about the services and fees included in the title insurance premium and any fees (e.g., cost of search and examination, closing services, etc.) that may be charged to you separately.
- A lender policy only covers a lender's loss; that is, it does not protect the home buyer from losses arising from defects in title. Consult with a local, reputable real estate attorney not involved in the real estate transaction to find out if it is in your best interest to purchase an owner's title insurance policy.
- Make sure to inquire about any discounts available on title insurance policies. Premium discounts might be available if both owner's and lender's policies are purchased from the same title insurance company or if you are refinancing your loan.
- Read all title insurance documents provided at closing, including the fine print. Ask questions if any items are unclear; or if any terms, conditions or amounts are not in line with those provided in previous discussions.
- If you believe that the title agent or title company in a real estate transaction is not following standard business practices (e.g., unexpected or undocumented fees), you can report the activity to the Utah Insurance Department at [http://www.insurance.utah.gov/complaint\\_inst.html](http://www.insurance.utah.gov/complaint_inst.html) or by calling (801)537-9177 or 1-800-439-3805.

For more information about title insurance in Utah go to <http://www.insurance.utah.gov/Title%20Commission.html>. Also, access the U.S. Government Accountability Office's April 2007 report on title insurance at <http://www.gao.gov/new.items/d07401.pdf>. The U.S. Department of Housing and Urban Development Web page <http://www.hud.gov/> is also a good source of information about title insurance.